

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**MASSACHUSETTS INSTITUTE OF
TECHNOLOGY**

Plaintiff,

V.

**HARMAN INTERNATIONAL INDUSTRIES,
INCORPORATED,**

Defendant.

Civil Action No. 05-10990-DPW
ORAL ARGUMENT REQUESTED

**HARMAN'S MOTION FOR SUMMARY JUDGMENT OF
UNENFORCEABILITY DUE TO MIT'S INEQUITABLE CONDUCT**

Pursuant to Fed. R. Civ. Proc. 56, defendant Harman now moves for summary judgment that U.S. Patent No. 5,177,685 (the “’685 Patent”), the sole patent-in-suit, is unenforceable due to plaintiff Massachusetts Institute of Technology’s inequitable conduct during prosecution. The undisputed facts show that:

- MIT affirmatively misrepresented and concealed the availability of the thesis authored by one of the inventors, Jim Davis, after the PTO Examiner expressly found it was prior art that invalidated each and every claim of the '685 Patent; and
- MIT withheld information and misled the PTO about multiple public uses of completed systems that were already known to be working satisfactorily when just one public use bars the patent under Section 102(b) of the Patent Act.

Either act on its own constitutes inequitable conduct that renders the entire '685 Patent unenforceable. Together, they leave no other conclusion. Harman thus asks the Court to enter summary judgment in its favor on Count II, Harman's Counterclaim for "Declaration of Unenforceability." *See* Harman's January 13, 2006 Answer and Counterclaims at pgs. 8-9 (Count II).

In support of this motion, Harman relies on the accompanying memorandum, which sets out the undisputed facts and legal authorities, along with the exhibits filed herewith.

WHEREFORE, Harman respectfully requests that this Court hold MIT engaged in inequitable conduct that renders U.S. Patent No. 5,177,685 unenforceable and enter judgment in favor of Harman on Count II of Harman's Counterclaims.

COMPLIANCE WITH LOCAL RULES 7.1 AND 37.1

Harman's counsel discussed the issues raised in this motion with MIT's counsel on April 11, 2007. During that conference call, the parties agreed that an impasse had been reached as to this issue. As the parties have been unable to resolve the issues, Harman respectfully requests the Court's assistance.

REQUEST FOR ORAL ARGUMENT

Furthermore, pursuant to Local Rule 7.1, Harman respectfully requests oral argument in conjunction with this motion.

Date: April 11, 2007

Respectfully submitted,

/s/ Courtney A. Clark

Robert J. Muldoon, Jr., BBO# 359480

James W. Matthews, BBO# 560560

Edward S. Cheng, BBO# 634063

Courtney A. Clark, BBO# 651381

SHERIN AND LODGEN, LLP

101 Federal Street

Boston, MA 02110

William A. Streff Jr., P.C.

Michelle A. H. Francis

Craig D. Leavell

Joanna Belle Gunderson

KIRKLAND & ELLIS LLP

200 East Randolph Drive

Chicago, Illinois 60601

(312) 861-2000 (phone)

(312) 861-2200 (fax)

Attorneys for Defendant

Harman International Industries, Incorporated

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on April 11, 2007.

/s/ Courtney A. Clark

Courtney A. Clark